Nos. 94-66 and 94-82

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

MIKE MOORE, et al.,

Appellants,

vs.

JOHNNY DUPREE, et al.,

Appellees.

THE LAMAR COUNTY BOARD OF EDUCATION AND TRUSTEES, et al.,

Appellants,

vs.

JOHNNY DUPREE, et al.,

Appellees.

On Appeal From The United States District Court For The Southern District Of Mississippi

SUPPLEMENTAL BRIEF IN SUPPORT OF JURISDICTIONAL STATEMENT

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ARGUMENT

I. THERE IS A SUBSTANTIAL ISSUE AS TO PRECLEARANCE UNDER THE VOTING RIGHTS ACT.

The central issue involved in this case is whether the State of Mississippi clearly identified the change in the law governing municipal annexations as one of the changes to be precleared, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, by the United States Attorney General in 1986. Contrary to the Appellees' argument (See Supplemental Brief in Support of Motion to Affirm of September 2, 1994), that is a substantial question. The substantial nature of the question presented is conclusively shown by the fact that the decision below was split 2 to 1, (See Lamar County's Jurisdictional Statement of July 11, 1994, at pp. 2-3) and the Mississippi Supreme Court has disagreed with the majority of the three-judge court below, *Greenville Public School District v. Western Line Consolidated School District*, 575 So.2d 956 (Miss. 1991), *cert. denied*, ___ U.S. ___, 112 S.Ct. 1512, 117 L.Ed.2d 649 (1992). Indeed, if one were to count "judicial heads" at this time, the State's position would win. Thus, this is hardly a case where there is no substantial basis for the argument on appeal.

II. SCHOOL DISTRICTS NEED GUIDANCE AS TO HOW TO ABIDE BY THE LAW.

As the Appellees, the Board of Trustees of the Hattiesburg Public School District, themselves recognize (Supplemental Brief in Support of Motion to Affirm, p. 3) the issue presented is important to "every city and county school district in Mississippi . . . ". However those

districts do not know what the law is. *Matter of City of Horn Lake*, 630 So.2d 10, 24 (Miss. 1993) (Impact on voting must be considered in reasonableness of annexation); *Enlargement of Boundaries of Yazoo City v. City of Yazoo City*, 452 So.2d 837 (Miss. 1984); *Matter of Boundaries of City of Jackson*, 551 So.2d 861 (Miss. 1989); *In the Matter of the Enlargement of the Corporate Limits of the City of Hattiesburg*, 588 So.2d 814, 826 (Miss. 1991) ("there was a good school close by"). On the one hand, the Mississippi Supreme Court has ruled that the 1986 law was precleared. *Western Line, supra.* The United States Supreme Court declined to review that decision, even after the Court had issued its opinion in *Clark v. Roemer*, 500 U.S. 646 (1991). On the other hand, the majority of the three-judge district court in this case has ruled, with one dissent, that the 1986 law was not precleared. The school districts and state courts in Mississippi, therefore, are entitled to a fully informed decision from the United States Supreme Court that will finally resolve the issue.

III. THE DECISION BELOW IS NEITHER CORRECT NOR COMPELLED BY *CLARK V. ROEMER*.

The three-judge district court held that the State did not adequately identify the change in the law because the State did not submit a copy of the repealed law. The then-applicable administrative regulations, however, did not require such a submission. Thus, the decision below is neither correct nor compelled by *Clark v. Roemer, supra.*

CONCLUSION

The Motion to Affirm should be denied and this Court should enter an order noting probable jurisdiction.

Respectfully submitted,

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